IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.2844 OF 2005

Deepak Fulchand Chankeshwara : Petitioner
(Orig. Pltff.)

V/s.

Sidheshwar Digambar Ghodke & Ors. : Respondents
(Orig. Defts.)

...

Mr.S.S.Shah for the petitioner.

Mr.Ajay A. Joshi for the respondent nos.1 to 4.

...

CORAM : S.A. BOBDE, J.

August 12, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Joshi waives service of rule on behalf of the respondent nos.1 to 4.

Heard by consent.

2. The petitioner has challenged the order dated 19.1.2005 below exh.51. By this order, the learned Civil Judge, Junior Division, Pandharpur, has observed that the petitioner is not in possession of the suit property and has obtained the order of injunction restraining the defendants from disturbing the possession of the

plaintiff.

3. The sole reason why the learned trial Court has held that the petitioner is not in possession is that the petitioner sought police help. According to learned trial Court, the police help was sought for taking possession of the property. A perusal of the application does not show that police help was sought for taking possession of the property. A reading of the application suggests that the permission was sought for retaining actual possession. There are no words in the application that police help is being sought for "taking possession".

4. Moreover, I am of view that the learned trial Judge has committed a gross error in directing that the petitioner should now seek a mandatory injunction on this ground alone. By making this observation, the learned trial Judge has negated the earlier orders of the two Courts confirming the injunction in favour of the petitioners, restraining the respondents from disturbing the petitioner’s possession.

5. In this view of the matter, the impugned order is hereby set aside. The rule is made absolute in the above terms. The trial Court shall be at liberty to review the need of continuing police protection.

Sd/-

(S.A. BOBDE, J.)